

Sterling A. Brennan (CA State Bar No. 126019; E-mail: sbrennan@wnlaw.com)
WORKMAN | NYDEGGER A PROFESSIONAL CORPORATION
1000 Eagle Gate Tower
60 East South Temple
Salt Lake City, Utah 84111
Telephone: (801) 533-9800
Facsimile: (801) 328-1707

Caroline McIntyre (CA State Bar No. 159005; E-mail: cmcintyre@be-law.com)
BERGESON, LLP
303 Almaden Boulevard
Suite 500
San Jose, California 95110-2712
Telephone: (408) 291-6200
Facsimile: (408) 297-6000

Attorneys for Plaintiff FINISAR CORPORATION

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

FINISAR CORPORATION, a Delaware corporation,

Case No. 5:07-CV-04052-HRL

Plaintiff.

V

**DEMAND FOR JURY TRIAL BY
PLAINTIFF FINISAR CORPORATION**

U.S. BANK TRUST NATIONAL ASSOCIATION, a national banking association, not in its individual capacity, but solely in its capacity as Indenture Trustee in behalf of all Holders of Finisar Corporation's 5 1/4% Convertible Subordinated Notes due 2008, 2 1/2% Convertible Senior Subordinated Notes due 2010, and 2 1/2% Convertible Subordinated Notes due 2010; and DOES 1 through 10, inclusive.

Defendants.

Magistrate Judge: Howard R. Lloyd

WHEREAS, on June 22, 2007, plaintiff Finisar Corporation (“Finisar”) commenced the above-captioned action (the “Action”) by filing in the Superior Court of the State of California for the County of Santa Clara (the “State Court”) its “Complaint for Declaratory Relief” (“Complaint”) against defendant U.S. Bank Trust National Association (the “Bank”) in its capacity as indenture trustee under those certain trust indentures correlating to the 5¼% convertible subordinated notes due 2008, 2½% convertible senior subordinated notes due 2010, and 2½% convertible subordinated notes due 2010 referenced in the caption hereof, and

WHEREAS, on or about August 6, 2007, Bank filed in the State Court its "Answer to Complaint for Declaratory Relief" (the "Answer"); and

WHEREAS, on or about August 7, 2007, Bank filed in this Court its "Notice of Removal" (the "Notice of Removal"); and

WHEREAS, on or about August 8, 2007, Bank filed in the State Court a copy of its Notice of Removal,

NOW THEREFORE, without waiver or limitation of any right to seek remand of the Action to the State Court as permitted and authorized by applicable law, and in light of the requirement of Federal Rule of Civil Procedure 81(c) that a jury demand be filed within ten days after service of the Notice of Removal,¹ Finisar hereby demands TRIAL BY JURY of all causes and issues in the above-captioned action so triable, howsoever—whether by its own Complaint, by the Bank's Answer, or otherwise—such causes and/or issues may be put at issue.

DATED: August 16, 2007

Respectfully submitted,

Sterling A. Brennan
WORKMAN NYDEGGER A PROFESSIONAL CORPORATION
Caroline McIntyre
BERGESON, LLP

By /s/ Sterling A. Brennan
Sterling A. Brennan
Attorneys for Plaintiff FINISAR CORPORATION

¹ See *Benjamin v. Natural Gas Pipeline Co. of Am.*, 793 F.Supp. 729, 732 (S.D. Tex. 1992) (noting that the deadlines imposed by 28 U.S.C. § 1447(c) and Federal Rule of Civil Procedure 81(c) “create the situation where jury demands will often be filed before remand motions”; and holding that, “[i]n light of this timing conflict, it would be ludicrous to conclude that the filing of a jury demand before a remand motion constitutes acquiescence to the federal forum and a waiver of the right to remand an improperly removed case”).

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on August 16, 2007, I electronically filed the foregoing with the Clerk
3 of the Court using the CM/ECF system which will send notification of such filing to the
4 following: D. Anthony Rodriguez, drodriguez@mofo.com; Abby E. Wilkinson,
5 awilkinson@faegre.com; Evi K. Schueller, eschueler@mofo.com; Michael B. Fisco,
6 mfisco@faegre.com; Paul T. Friedman, pfriedman@mofo.com.

7 **WORKMAN NYDEGGER**

8
9 _____
10 /s/ Sterling A. Brennan
11 STERLING A. BRENNAN
12 **WORKMAN NYDEGGER**
13 1000 Eagle Gate Tower
14 60 East South Temple
15 Salt Lake City, UT 84111
16 Telephone: (801) 533-9800